



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1267]

Certain Power Inverters and Converters, Vehicles Containing the Same, and Components Thereof; Notice of a Commission Determination to Review in Part and, on Review, Affirm a Final Initial Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”). On review, the Commission has determined to affirm the final ID’s finding of no violation. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“EDIS”) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On June 28, 2021, the Commission instituted this investigation based on a complaint filed by Arigna Technology Limited of Carrickmines, Ireland (“Arigna”). 86 FR 34042-43 (Jun. 28, 2021). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United

States after importation of certain power inverters and converters, vehicles containing the same, and components thereof that infringe one of more of the asserted claims of U.S. Patent Nos. 8,247,867 (“the ’867 patent”) and 8,289,082 (“the ’082 patent”). *Id.* at 34042. The complaint also alleges that a domestic industry exists or is in the process of being established. *Id.*

The Commission’s notice of investigation named the following respondents: Audi AG of Ingolstadt, Germany and Audi of America, LLC of Herndon, Virginia (collectively, “Audi”); Bentley Motors Limited. of Crewe, United Kingdom and Bentley Motors, Inc. of Reston, Virginia (collectively, “Bentley”); Bayerische Motoren Werke AG of Munich, Germany and BMW of North America, LLC, of Woodcliff Lake, New Jersey (collectively, “BMW”); Daimler AG of Stuttgart, Germany and Mercedes-Benz USA, LLC of Sandy Springs, Georgia (collectively, “Daimler”); General Motors Company of Detroit, Michigan (“GMC”); General Motors LLC of Detroit, Michigan (“GM”); Automobili Lamborghini S.p.A. of Sant’Agata, Italy and Automobili Lamborghini America, LLC of Herndon, Virginia (collectively, “Lamborghini”); Porsche AG of Stuttgart, Germany and Porsche Cars North America, Inc. of Atlanta, Georgia (collectively, “Porsche”); and Volkswagen AG of Wolfsburg, Germany and Volkswagen Group of America, Inc. of Herndon, Virginia (collectively, “Volkswagen”) (all collectively, “Respondents”). *Id.* at 34043. The Office of Unfair Import Investigations (“OUII”) is also participating in this investigation. *Id.*

On December 1, 2021, the presiding administrative law judge (“ALJ”) held a *Markman* hearing. On January 18, 2022, the ALJ issued a *Markman* order (Order No. 30), construing certain disputed claim terms of the ’082 and ’867 patents.

On January 18, 2022, the Commission terminated the investigation with respect to General Motors Company based on a withdrawal of the complaint. Order No. 23 (Dec. 20, 2021), *unreviewed by* Comm’n Notice (January 18, 2022).

On March 15, 2022, the Commission partially terminated the '867 patent from the investigation as asserted against BMW. Order No. 37 (Feb. 18, 2022), *unreviewed by Comm'n Notice* (Mar. 15, 2022).

On April 25, 2022, the Commission terminated certain claims of the '082 patent and '867 patent based on a partial withdrawal of the complaint. Order No. 50 (Apr. 6, 2022), *unreviewed by Comm'n Notice* (Apr. 25, 2022).

On May 17, 2022, the Commission terminated the investigation with respect to Porsche due to a settlement agreement. Order No. 53 (April 29, 2022), *unreviewed by Comm'n Notice* (May 17, 2022).

The presiding ALJ held an evidentiary hearing on April 4-8, 2022. The parties timely filed their initial post-hearing briefs on April 25, 2022, and their post-hearing reply briefs on May 4, 2022.

On August 12, 2022, the presiding ALJ issued the subject ID, finding no violation of section 337 with respect to either the '082 patent or the '867 patent. In particular, the ID finds: (1) Arigna failed to prove that Respondents infringed any of asserted claims 1, 13, 17, or 29 of the '082 patent; (2) claims 1, 13, 17, and 29 of the '082 patent are invalid as anticipated or obvious over the prior art; (3) Respondents did not infringe asserted claim 8 of the '867 patent; (4) claim 4 of the '867 patent (asserted for domestic industry purposes) is invalid as anticipated; but asserted claim 8 is not invalid; and (5) Arigna has not satisfied the economic prong of the domestic industry requirement with respect to the '867 patent.

On August 26, 2022, the presiding ALJ issued a recommended determination on remedy, the public interest, and bonding, recommending that the Commission issue a limited exclusion order (subject to a delay in implementation of up to six months) and cease and desist orders against Audi, BMW, Mercedes, GM, and Volkswagen (but not Bentley or Lamborghini), and set a zero percent bond, should the Commission find a violation of section 337.

On August 26, 2022, Arigna filed a petition for review of the ID's findings on claim construction, non-infringement, and invalidity with respect to the '082 patent. No other party petitioned for review of the ID's findings regarding the '082 patent.

On August 26, 2022, respondent GM filed a contingent petition for review of the ID's finding that asserted claim 8 of the '867 patent is not invalid. No other party, including Arigna, petitioned for review of any findings regarding the '867 patent.

On September 6, 2022, Respondents and OUII each filed their opposition to Arigna's petition for review of the ID's findings with respect to the '082 patent. OUII filed a response to GM's contingent petition for review on the same date.

On November 22, 2022, the Commission terminated the investigation with respect to Daimler, Volkswagen, Audi, Bentley, and Lamborghini due to settlement agreements. Comm'n Notice (Nov. 22, 2022). BMW and GM remain as respondents.

Upon consideration of the ID, the parties' submissions, and the evidence of record, the Commission has determined to review in part and, on review, affirm the ID's finding of no violation of section 337. Specifically, the Commission has determined to review and take no position on the ID's findings: (a) that claims 1 and 17 of the '082 patent are anticipated by Japanese Patent Publication No. S62-171212 to Soneda ("Soneda"); (b) that claims 13 and 29 of the '082 patent are invalid as obvious over Soneda in combination with U.S. Patent No. 6,094,246 to Kozisek et al. ("Kozisek"); (c) that claim 8 of the '867 patent is not invalid as obvious over U.S. Patent Publication No. 2009/0179261 to Sekugichi in combination with U.S. Patent Publication No. 2009/0218619 to Hebert; and (d) on the domestic industry requirement for the '082 patent and the '867 patent.

The Commission has determined not to review, and thereby adopts, the ID's remaining findings, including with respect to the '082 patent: (a) the ID's claim constructions; (b) that Arigna failed to prove that Respondents infringed any of asserted claims 1, 13, 17, and 29; (c) that asserted independent claims 1 and 17 are invalid as anticipated by a prior art article

written by Suharli Tedja et al. and published in the IEEE Journal of Solid-State Circuits in February 1995 (“Tedja”); (d) that asserted dependent claims 13 and 29 are invalid as obvious over Tedja alone or Tedja in combination with Kozisek; and (e) that asserted claims 1, 13, 17, and 29 are invalid as obvious over Kozisek in combination with Soneda. The Commission has further determined not to review the ID’s findings that the asserted claims of the ’867 patent are not infringed and claim 4 is invalid as anticipated by International Patent Application Publication WO 2009/060670 to Torii.

For the foregoing reasons, the Commission concludes that there is no violation of section 337 with respect to either the ’082 patent or ’867 patent. This investigation is hereby terminated.

The Commission voted to approve this determination on December 7, 2022.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 7, 2022.

Katherine Hiner,

Acting Secretary to the Commission.